

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: OUT OF DISTRICT SUBPOENA,

Case No. 1:08-MC-00003

Honorable Richard Alan Enslen

ORDER

Petitioners Gailon Arthur Joy and Robert Pickle filed a motion to compel pursuant to a third-party subpoena issued from this District. The third-party subpoena arises from a case pending in the District of Massachusetts brought by Three Angels Broadcasting Network, Inc. and Danny Lee Shelton against Gailon Arthur Joy and Robert Pickle for alleged defamation. Petitioners seek documents from Respondent Remnant Publications, Inc., relating, *inter alia*, to Three Angels Broadcasting Network, Inc. and Danny Lee Shelton. The motion to compel was referred to United States Magistrate Judge Ellen S. Carmody, who, after hearing, issued an order granting in part and denying in part the motion to compel. The Magistrate Judge ordered produced those documents described in the subpoena involving Three Angels Broadcasting Network and Danny Lee Shelton. Respondent Remnant Publications filed a motion to amend the order to require prior *in camera* review by the Court for the District of Massachusetts. The motion to amend was denied by the Magistrate Judge on July 28, 2008. The matter is before the Court on Respondent's appeal from the Magistrate Judge's Order denying the motion to amend.

A district court considering objections to an order issued on a non-dispositive matter that was referred to a magistrate judge may "modify or set aside any part of the order that is clearly erroneous or contrary to law." FED. R. CIV. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A); W.D. MICH. LCivR

72.3(a). A decision is clearly erroneous when, “although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed.” *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). If there are two plausible views of a matter, then a decision cannot be “clearly erroneous.” *Anderson v. City of Bessemer*, 470 U.S. 564, 573 (1985).

Respondent argues that the documents sought by Petitioners are not relevant to the underlying lawsuit and that the scope of the discovery sought is overbroad. Respondent also argues that no order to produce documents should have been granted unless and until the District of Massachusetts had the opportunity to review those documents *in camera*. After careful consideration of Respondent’s arguments, the record evidence and the Order on review, this Court concludes that the Magistrate Judge’s Order is neither clearly erroneous nor contrary to law. Accordingly,

IT IS HEREBY ORDERED that Respondent Remnant Publications, Inc.’s Claim of Appeal Pursuant to Local Civil Rule 72.3 (Dkt. No. 33) is **DENIED**, and the Magistrate Judge’s Order (Dkt. No. 32) is **AFFIRMED**.

DATED in Kalamazoo, MI:
September 8, 2008

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE